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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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35M1/0909

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PHAM, T

EXAMINER

3508

ART UNIT

PAPER NUMBER

09/09/97

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

Applicant's failure to timely file a proper response to the Office letter mailed on 1-31-97.

A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.

A proposed response was received on 6-2-97, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).

No response has been received.

Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.

The submitted issue fee of \$ _____ is insufficient. The issue fee required by 37 CFR 1.18 is \$ _____.

The issue fee has not been received.

Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.

The proposed new formal drawings filed _____ are not acceptable.

No proposed new formal drawings have been received.

The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below:

STEVEN N. MEYERS
SUPERVISORY PATENT EXAMINER
GROUP 3500

Art Unit: 3508

The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because the functional recitation "capable of continuously supporting patients having weights in the range of 500 to 800 pounds without incurring any catastrophic structural damage" raises a new issue that would require further consideration and/or search.

It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

In order to be given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279. In the instant case, what enables the apparatus to support weights of 500 to 800 pounds? Is it the strength of the material of the frame? There is nothing recited in the claim which differentiates the claimed apparatus from the prior art apparatus satisfying the claimed structural limitations. Applicant claims a frame comprising an articulated mattress support having at least first, second and third articulatable sections; a raise-and-lower mechanism; and an articulation mechanism. The prior art teaches an apparatus having the claimed structural limitations. Since there is no structural difference between the *claimed* invention and the prior art, the prior art references inherently teaches an apparatus which is capable of supporting weights in the range of 500 to 800 pounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teri Pham whose telephone number is (703) 305-7421, facsimile number is (703) 305-3597/3598.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Meyers, can be reached at (703) 308-3868. Inquires of a general nature relating to the status of this application should be directed to the group receptionist at (703) 308-2168.

Teri Pham
June 9, 1997


STEVEN N. MEYERS
SUPERVISORY PATENT EXAMINER
GROUP 3500